

MAR 1 1919

JAMES D. MAHER,

CLERK

IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1918.

No. 171

RUST LAND & LUMBER COMPANY,
Petitioner,

vs.

ED JACKSON, WILL SCOTT, J. F. NICHOLS, A. C.
COLEMAN, ZANDERS PARKER and ISOM
WHITE,

Respondents.

PETITION FOR CERTIORARI.

RUST LAND & LUMBER COMPANY,
By HERBERT POPE,
Counsel.



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*To the Honorable, the Judges of the Supreme Court of
the United States:*

Your petitioner, Rust Land & Lumber Company, a corporation organized under the laws of the State of Wisconsin, respectfully shows to this court that on March 12, 1917, this court, upon petition duly presented and filed by the petitioner, issued a writ of error to the Honorable Judges of the Supreme Court of Mississippi, commanding them to send to this court for review the record and proceedings, with all things concerning the same, in

a suit between your petitioner and Ed Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White; that in compliance with said writ a duly certified copy of the record and proceedings in said cause was transmitted to and filed in this court; that said record has been printed and said cause is now pending in this court, and is known as No. 171 on the pending docket of this court; that question has been made of the jurisdiction of this court in said cause, upon the writ of error so issued by it, and your petitioner therefore presents and files this, its petition for *certiorari*, and respectfully asks that, in case said writ of error be dismissed by this court, this court grant to it the relief herein prayed, and that the transcript of the record in said cause, No. 171, be considered as filed as an exhibit to this petition, and in support of this petition your petitioner shows as follows:

1. Heretofore, and on or about the 15th day of March, 1913, an action of replevin was commenced in the Circuit Court, First District, for the County of Coahoma, State of Mississippi, by Ed. Jackson, Will Scott, J. F. Nichols, A. C. Coleman, Zanders Parker and Isom White against your petitioner, Rust Land & Lumber Company, to recover certain timber, or the value thereof, alleged to have been wrongfully taken by your petitioner from the possession of the said respondents. To the declaration of the respondents your petitioner, Rust Land & Lumber Company, pleaded the general issue, and, upon the trial, the cause was submitted to a jury under the instructions of the court and the jury returned a verdict in favor of respondents in the sum of \$3,600 and judgment was entered in said Circuit Court in accordance with the verdict of the jury. The issue involved and submitted to the jury in said cause, under the instructions

of the court, involved the question of the location of the boundary line between the State of Mississippi and the State of Arkansas at a certain point on the Mississippi River known as Horse Shoe Bend, the respondents claiming that the land from which the timber in question in this suit was cut was in the State of Mississippi and your petitioner claiming that said lands were in the State of Arkansas.

2. Your petitioner, Rust Land & Lumber Company, appealed from the judgment of said Circuit Court to the Supreme Court of Mississippi. While the case was pending in said Supreme Court, and on or about the 6th day of March, 1916, your petitioner, Rust Land & Lumber Company, appellant in said cause then pending in the Supreme Court of Mississippi, moved the court to continue the cause and stay the trial thereof until a certain cause then pending in this court, known as *State of Arkansas v. State of Mississippi* on the docket of this Honorable Court, was determined. In support of said motion, your petitioner set forth that said cause between the State of Arkansas and the State of Mississippi involved the true boundary line between the said states at the very point in controversy in this cause then pending in the Supreme Court of Mississippi, and that a determination of the boundary line by this court would determine the boundary line between the said states and whether the land involved in this cause was in the State of Arkansas and belonged to your petitioner, or was in the State of Mississippi and belonged to the respondents. This motion was at first granted, but subsequently the respondents moved to set aside this order for a continuance upon the ground that the decision of this court in the case between the States of Arkansas and Mississippi would not be rendered upon the same testimony

which was produced in this cause, and that there was no way by which the judgment of this court in said case between the two states could be introduced in this cause then pending in the Supreme Court of Mississippi, and that the Supreme Court of Mississippi was in no way subject to the final jurisdiction of this court as to the question involved in said cause. This motion of the respondents was granted, the order for a continuance was set aside and the cause set for hearing at the October term of said Supreme Court of Mississippi, 1916. On December 23, 1916, the Supreme Court of Mississippi affirmed the judgment of the Circuit Court of Coahoma County. A petition for rehearing filed by your petitioner in said cause in the Supreme Court of Mississippi, calling the attention of said Supreme Court to the decision of this court in the case of *Cissna vs. State of Tennessee*, reported in 242 U. S., 195, was denied.

3. The judgment of the Circuit Court of Coahoma County in said cause was based upon a single issue which involved the boundary line between the States of Arkansas and Mississippi. This question was a federal question arising under certain acts of Congress admitting the States of Mississippi and Arkansas to the Union, as appeared in the bill in the case then pending in this court between the State of Arkansas and the State of Mississippi, which bill was filed by your petitioner with its motion in the Supreme Court of Mississippi. The judgment of the Supreme Court of Mississippi affirming the judgment of the Circuit Court of Coahoma County was not and could not have been based on any ground which did not involve the decision of this federal question—the location of the boundary line between the two states—and this federal question was not decided in accordance with the rules established and applied by this

court in such cases. A federal question was also directly raised in the Supreme Court of Mississippi by the motions made by your petitioner and by the respondents with reference to the continuance of said cause pending the determination by this court of the case between the two states, and the decision of said court setting aside the order granting the continuance and the judgment of said court affirming the judgment of said Circuit Court were by the highest court in said state in which a decision could be had, and denied the title, right, privilege or immunity thus claimed by your petitioner under the constitution and the statutes of, and an authority exercised under, the United States.

4. Wherefore, your petitioner claims and says that by the final judgment in said cause in the highest court in the State of Mississippi in which a decision in said cause could be had, there was a right, title, privilege or immunity which was specially set up and claimed by your petitioner, under and by virtue of the constitution and statutes of and an authority exercised under the United States, and the decision of said court was against such right, title, privilege or immunity which was so specially set up and claimed by your petitioner.

And your petitioner respectfully prays that, in case said writ of error be dismissed by this court, a writ of *certiorari* be issued out of and under the seal of this court, directed to the Supreme Court of the State of Mississippi, directing it to stay all further proceedings in said cause between your petitioner and said respondents until the further order of this court; that the transcript of the record of the proceedings of said Supreme Court of Mississippi in said cause No. 171, now on file in this court, be considered and treated as filed with this petition, and that the printed record of the proceedings

in said cause No. 171, now on file in this court, be considered and treated as the printed record in this cause in this court, to the end that this cause may be reviewed and determined by this court. Your petitioner further prays for an allowance of a citation and *supersedeas* in due form of law and that execution upon said judgment of the Supreme Court of Mississippi and the levy of such execution may be stayed until the further order of this court; that the judgment of said Supreme Court of Mississippi be reversed, and that your petitioner may have such other and further relief in the premises as may be just. And your petitioner will ever pray, etc.

RUST LAND & LUMBER COMPANY,

By HERBERT POPE,
Counsel.